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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff, Criminal Action
No. 12-10025-DJC

V.

May 10, 2013

RONALD E. BROWN,

Defendant.

TRANSCRIPT OF JURY INSTRUCTIONS
BY THE HONORABLE DENISE J. CASPER
UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
1 COURTHOUSE WAY
BOSTON, MA 02210

DEBRA M. JOYCE, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Room 5204
Boston, MA 02210
617-737-4410

1 APPEARANCES:

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Denise J. Casper, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on May 10, 2013.

The defendant, Ronald E. Brown, is present with counsel. The Assistant U.S. Attorneys are present.)

* * * * *

THE COURT: Jurors, we now come to the final part of the case before you get this case for your deliberation, which is my final charge and my instructions of law to you.

It is your duty to find the facts from all of the evidence admitted in this case. To those facts you must apply the law as I give it to you. The determination of the law is my duty as the presiding judge in this court. It is your duty to apply the law exactly as I give it to you, whether you agree with it or not. That means you must decide the case solely on the evidence before you and according to the law.

In following my instructions, you must follow all of them and not single out some and ignore others. They are all equally important. You must not read into these instructions, or into anything I may have said or done, any suggestion by me as to what verdict you should return. That is a matter entirely for you to decide.

1 I have organized these instructions into three parts.
2 First, general instructions; second, instructions as to the
3 charges in this case; and third, instructions that will govern
4 the conduct of your deliberations.

5 Every person accused of a crime is presumed innocent
6 unless and until his or her guilt is established beyond a
7 reasonable doubt. The presumption is not a mere formality. It
8 is a matter of the most important substance.

9 The presumption of innocence alone may be sufficient
10:15 10 to raise a reasonable doubt and to require the acquittal of a
11 the defendant. The defendant before you, Mr. Brown, has the
12 benefit of that presumption throughout the trial, and you are
13 not to convict him of a particular charge unless you are
14 persuaded of his guilt of that charge beyond a reasonable
15 doubt.

16 The presumption of innocence until proven guilty means
17 that the burden of proof is always on the government to satisfy
18 you that the defendant is guilty of the crime with which he is
19 charged beyond a reasonable doubt. The law does not require
10:16 20 that the government prove guilt beyond all possible doubt.

21 Proof beyond a reasonable doubt is sufficient to convict. This
22 burden never shifts to the defendant. It is always the
23 government's burden to prove each of the elements of the crime
24 charged beyond a reasonable doubt by the evidence and the
25 reasonable inferences to be drawn from that evidence. The law

1 does not require a defendant to prove his innocence or to
2 produce any evidence. Mr. Brown has the right to rely upon the
3 failure or the inability of the government to establish beyond
4 a reasonable doubt any essential element of the crimes charged
5 against him.

6 If, after fair and impartial consideration of all the
7 evidence, you have a reasonable doubt as to the defendant's
8 guilt of the crimes charged, it is your duty to acquit him of
9 that crime. On the other hand, if, after fair and impartial
10:17 10 consideration of all the evidence, you are satisfied beyond a
11 reasonable doubt of the defendant's guilt of the crime charged,
12 you should vote to convict him.

13 The defendant, Mr. Brown, has a constitutional right
14 not to testify, and no inference of guilt or of anything else
15 may be drawn from the fact that the defendant did not testify.
16 For any of you to draw such an inference would be wrong.
17 Indeed, it would be a violation of your oath as a juror.

18 Again, it's the government's burden to prove beyond a
19 reasonable doubt each of the elements of the charges. The
10:17 20 defendant, Mr. Brown, need not prove his innocence.

21 The evidence from which you are to decide the facts in
22 this case consist of the sworn testimony of the witnesses, both
23 on direct and cross-examination, regardless of who called the
24 witness; the exhibits that have been received into evidence;
25 and any facts to which the lawyers have agreed or stipulated.

1 A "stipulation" means simply that the government and defendant
2 accept the truth of a particular proposition or fact. Since
3 there's no disagreement, there's no need for evidence apart
4 from that stipulation. You must accept the stipulation as fact
5 to be given whatever weight you choose.

6 Although you may consider only the evidence presented
7 in this case, you are not limited in considering that evidence
8 to the plain statements made by the witnesses or contained in
9 the documents. In other words, you are not limited solely to
10:18 10 what you see and hear as the witnesses testify. You are
11 permitted to draw from the facts that you find to have been
12 proven such reasonable inferences as you believe are justified
13 in the light of common sense and personal experience.

14 An inference is simply a deduction or conclusion that
15 may be drawn from the facts that have been established. Any
16 inference you draw must be reasonable and based on the facts as
17 you find them. Inferences may not be based on speculation or
18 conjecture.

19 There are two kinds of evidence: direct and
10:19 20 circumstantial. Direct evidence is evidence that directly
21 addresses the truth of a fact, such as testimony from an
22 eyewitness that a witness saw something. Direct evidence can
23 be a simple assertion by someone, for example, it's raining
24 outside. That is a statement of a fact observed. If you
25 thought that person who said that to you was truthful and had a

1 sufficient basis for knowing what the weather was like outside,
2 you could accept that statement as direct evidence that it's
3 raining outside. Alternatively, if you doubted the reliability
4 of the statement, you could reject it.

5 Circumstantial evidence is indirect evidence; that is,
6 proof of a fact or facts from which you can draw the inference
7 by reason and common sense that another fact exists, even
8 though it has not been proven directly. To illustrate an
9 example of circumstantial evidence, let's return to the prior
10:20 10 example regarding the weather outside. Suppose that instead of
11 having someone report to you about the weather conditions,
12 someone came in from outside wearing a wet raincoat and shaking
13 water off an umbrella. Without any words being spoken, that
14 is, without any direct statement or assertion being made, an
15 observer might conclude that it was raining outside. The
16 observer would have some direct evidence to consider, the
17 observations of a wet raincoat and the dripping umbrella.
18 Thinking about those pieces of direct evidence might lead the
19 observer to draw a conclusion or an inference about an
10:20 20 unobserved fact: that it was raining.

21 You are entitled to consider both kinds of evidence.
22 The law permits you to give equal weight to both or to give
23 greater weight to one or the other. It remains for you to
24 decide how much weight to give to any evidence.

25 Certain things are not evidence. I will list them for

1 you.

2 Number one. Arguments and statements by lawyers are
3 not evidence. The lawyers are not witnesses. What an attorney
4 might say in his opening statement, closing arguments, and at
5 other times is intended to help you interpret the evidence, but
6 it is not evidence. If the facts as you remember them from the
7 evidence differ from the way the lawyers have stated them, your
8 memory of them controls.

9 Number two. Questions by lawyers standing alone are
10:21 10 not evidence. Again, the lawyers are not witnesses. The
11 question and answer taken together are the evidence.

12 Three. Objections by lawyers are not evidence.
13 Lawyers have a duty to their clients to object when they
14 believe a question is improper under the rules of evidence. If
15 I sustain an objection, in other words, if I agreed with the
16 lawyer objecting, you must ignore the question or exhibit and
17 must not guess what the answer might have been or what the
18 exhibit might have contained.

19 Four. Anything you may have seen or heard when court
10:22 20 was not in session is not evidence. You are to decide the case
21 solely on the evidence received at trial.

22 Five. The indictment is not evidence. This case,
23 like most criminal cases, began with an indictment. I'm
24 sending a copy of the indictment into the jury room with you to
25 have during your deliberations. I caution you, as I have

1 before, that the fact that Mr. Brown has had an indictment
2 filed against him is no evidence whatsoever of his guilt.
3 Mr. Brown has pled not guilty in this case and denies the
4 charges in the indictment. The indictment is simply an
5 accusation. It is the means by which the allegations and the
6 charge of the government are brought before this Court.

7 Six. Anything that I've excluded from evidence or
8 ordered stricken and instructed you to disregard is not
9 evidence. You must not consider such items.

10:23 10 You must decide this case solely upon the evidence.
11 You must not be influenced by any personal likes or dislikes,
12 prejudice or sympathy. You may also not consider or be
13 influenced by any possible punishment that may be imposed on
14 the defendant or any other possible consequences of a
15 conviction.

16 During this trial, you've heard evidence of acts that
17 the government alleges were committed by both this defendant,
18 Mr. Brown, and by an individual named Lynch Arthur. It is up
19 to you to decide, based on all of the evidence in this case and
10:23 20 the instructions as I have given you, whether the government
21 has proven beyond a reasonable doubt that Mr. Brown is guilty
22 of the charged offenses. In doing so, you should not speculate
23 about or consider in any way the status of Lynch Arthur. The
24 only person on trial in this case is the defendant, Mr. Brown.
25 While you may, of course, consider all of the evidence in the

1 case, including acts that the government alleges were committed
2 by Lynch Arthur, in deciding, consistent with my instructions,
3 whether all of the evidence proves Mr. Brown's guilt beyond a
4 reasonable doubt, the current status of Lynch Arthur is not
5 relevant to that determination.

6 Your function is to weigh the evidence in the case and
7 to determine whether the government has proved Mr. Brown's
8 guilt beyond a reasonable doubt, solely upon the basis of the
9 evidence. Your verdict must be based solely on the evidence
10:24 10 and the law as I've given it to you in these instructions.

11 Whether the government has sustained its burden of
12 proof does not depend upon the number of witnesses it has
13 called or the number of exhibits it has offered, but instead
14 upon the nature and quality of the evidence presented. You do
15 not have to accept the testimony of any witness if you find the
16 witness not credible. You must decide which witnesses to
17 believe and which facts are true. To do this, you must look at
18 all the evidence, drawing upon your common sense and personal
19 experience. You may believe all of the testimony of a witness
10:25 20 or some of it or none of it. You alone are the judges of the
21 credibility of the witnesses.

22 Now, in deciding whether to believe a witness'
23 testimony, you may want to take into consideration such factors
24 as the witness' conduct and demeanor while testifying; any
25 apparent fairness or any bias they may have displayed; any

1 interest you discern that they may have in the outcome of the
2 case; any prejudice they may have shown; their opportunities
3 for seeing and knowing the things about which they have
4 testified; the reasonableness or unreasonableness of the events
5 that they have related to you in their testimony; and any other
6 facts or circumstances disclosed by the evidence that tend to
7 corroborate or contradict their version of the events.

8 The testimony of a witness may be discredited or
9 impeached by showing that he or she previously made statements
10:25 10 that are inconsistent with his or her present testimony. If a
11 witness is shown to have given inconsistent statements
12 concerning any material matter, you have a right to distrust
13 that witness' testimony in other respects. You may reject all
14 of the testimony of that witness or give it such credibility as
15 you may think it deserves.

16 Sometimes, of course, people make innocent mistakes,
17 particularly as to unimportant details; not every contradiction
18 or inconsistency is necessarily important. Again, you alone
19 are the judges of the witness' credibility.

10:26 20 Some prior inconsistent statements may be used for
21 purposes other than impeachment. If you find that a witness
22 has made inconsistent statements under oath on an earlier
23 occasion, such as in a prior proceeding, you may consider that
24 earlier statement for its truth or falsity the same as any
25 testimony at the trial.

1 You have heard testimony from several witnesses
2 offered as experts in this case regarding various matters in
3 this case, including the examination of latent fingerprints and
4 the absence of fingerprint evidence and DNA evidence. An
5 expert witness has special knowledge or experience that allows
6 the witness to give an opinion. You may accept or reject such
7 testimony. In weighing an expert's testimony, you should
8 consider the factors that generally bear upon the credibility
9 of a witness, as well as the expert's qualifications, including
10:27 10 his or her education, experience, and training; the soundness
11 of the reasons given for the opinion; and all of the other
12 evidence in the case. You may give the expert testimony
13 whatever weight, if any, you find it deserves in light of all
14 of the evidence in this case. You should not, however, accept
15 a witness' testimony merely because he or she is an expert.
16 Remember that you alone decide how much of a witness' testimony
17 to believe and how much weight it should be given.

18 Part II.

19 I'm now going to instruct you on the nature of the
10:28 20 crimes charged in the indictment and the elements of the
21 offenses that the government must prove beyond a reasonable
22 doubt.

23 The defendant, Mr. Brown, is charged by the government
24 in three counts of violating federal law. First, the
25 government charges that on October 31, 2011, Mr. Brown did

1 knowingly obstruct, delay, and affect commerce, as that term is
2 defined in Title 18, United States Code, Section 1951(b)(3),
3 and the movement of articles and commodities in commerce by
4 robbery, as that term is defined in Title 18, United States
5 Code, Section 1951(b)(1).

6 Second, Mr. Brown is charged with using or carrying a
7 firearm during and in relation to a crime of violence, alleged
8 here to be a robbery, in violation of Title 18, United States
9 Code, Section 924(c).

10:28 10 Third, Mr. Brown is charged with possessing a firearm
11 in or affecting commerce after having been convicted of a crime
12 punishable by imprisonment for more than one year in violation
13 of Title 18, United States Code, Section 922(g)(1).

14 I'll now address each of these charged offenses and
15 the elements that the government must prove as to each of these
16 alleged offenses.

17 In Count One, the government charges that Mr. Brown
18 did knowingly obstruct, delay, and affect commerce by
19 committing robbery in violation of Title 18, United States
10:29 20 Code, Section 1951. It is against federal law to obstruct,
21 delay, or affect commerce by committing robbery.

22 For you to find Mr. Brown guilty of this crime, the
23 government has to prove each of the following elements beyond a
24 reasonable doubt:

25 First, that the defendant knowingly and willfully

1 obtained money from MetroPCS; second, that he did so by means
2 of robbery; and third, that the robbery affected commerce.

3 As used in these instructions, the word "knowingly"
4 means that an act was done voluntarily and intentionally and
5 not because of mistake or accident. To act "willfully" means
6 to act voluntarily and intentionally and with the specific
7 intent that the underlying crime be committed; that is to say,
8 with bad purpose, either to disobey or disregard the law, not
9 to act by ignorance, accident, or mistake.

10:30 10 "Robbery" means unlawfully taking or obtaining of
11 personal property, including money, from the person or in the
12 presence of another, against his or her will by means of actual
13 or threatened force, or violence, or fear of injury, immediate
14 or future, to his or her person or property, or property in his
15 or her custody or possession.

16 For purposes of this charge, the term "commerce" means
17 commerce between any point in a state and any point outside the
18 state, including another state or a foreign country. The
19 government must prove that MetroPCS was engaged in commerce by
10:31 20 establishing that it sold goods that were manufactured outside
21 Massachusetts, either in another state or in a foreign country,
22 and/or by establishing that MetroPCS had customers from out of
23 state or shipped goods that it sold out of state. To prove an
24 effect on commerce, the government need only prove beyond a
25 reasonable doubt that there is a realistic probability that the

1 acts committed by the defendant had some slight or minimal
2 effect on commerce or that the assets of MetroPCS were depleted
3 and/or that the business of MetroPCS was interrupted because of
4 the robbery. It is not necessary for you to find that the
5 defendant knew or intended that his actions would affect
6 commerce.

7 In Count One, the affecting commerce by robbery
8 charge, the government also charges Mr. Brown with aiding and
9 abetting another person in committing this crime.

10:32 10 To "aid and abet" means to intentionally help someone
11 else commit the charged crime. To establish aiding and
12 abetting liability, the government must prove two things beyond
13 a reasonable doubt:

14 First, that someone else committed the charged
15 robbery; and second, that the defendant conscientiously shared
16 the other person's knowledge of the underlying crime, here
17 affecting commerce by robbery, intended to help him, and took
18 part in the endeavor seeking to make it succeed.

19 The defendant need not have performed the robbery
10:32 20 himself, been present when it was performed, or been aware of
21 the details of the execution to be guilty of aiding and
22 abetting. But a general suspicion that an unlawful act may
23 occur or that something criminal is happening is not enough.
24 Mere presence at the scene of the robbery and knowledge that a
25 robbery is being committed are also not sufficient to establish

1 aiding or abetting.

2 Alternatively, a defendant may also be found guilty of
3 the charge charged in Count One if the government proves beyond
4 a reasonable doubt each of the following five elements:

5 First, that someone committed the robbery charged in
6 Count One; second, that the person you find actually committed
7 the robbery was a member of a conspiracy of which you find the
8 defendant, Mr. Brown, was also a member; third, that this
9 co-conspirator committed the robbery in furtherance of that
10:33 10 conspiracy; fourth, that the defendant, Mr. Brown, was a member
11 of this conspiracy at the time the robbery was committed and
12 had not withdrawn from it; and fifth, that the defendant could
13 reasonably have foreseen that his co-conspirator might commit
14 the robbery.

15 If you find all five of these elements to exist beyond
16 a reasonable doubt, then you may find the defendant, Mr. Brown,
17 guilty of the robbery, even though he did not personally
18 participate in all of the acts constituting the crime.

19 If, however, you are not satisfied as to the existence
10:34 20 of any of these five elements, then you may not find the
21 defendant guilty of the robbery unless the government proves
22 beyond a reasonable doubt that the defendant, Mr. Brown,
23 personally committed the robbery or aided and abetted its
24 commission.

25 Now, a conspiracy is an agreement or a combination of

1 two or more people to violate the law. What this means is that
2 each conspirator acts not only for himself but also acts for
3 the other conspirators. The gist of the offense is a
4 combination or agreement to disobey or disregard the law to
5 achieve the unlawful purpose.

6 An agreement can be spoken or unspoken. A conspiracy
7 doesn't have to be a formal agreement or a plan in which
8 everyone sat down together and worked out all of the details.
9 In order for you to find that a conspiracy existed, you need
10:35 10 not find that the alleged members in the conspiracy met
11 together and entered into any express or formal agreement.
12 Similarly, you need not find that the alleged conspirators
13 stated in words or writing what their scheme was, its object or
14 purpose, or every precise detail of the scheme or the means by
15 which its object or purpose was to be accomplished. The
16 government must prove beyond a reasonable doubt that those who
17 were involved shared a general understanding of the crime.

18 Since a conspiracy is by its very nature often secret,
19 neither the existence of the common agreement or scheme, nor
10:35 20 the fact of a defendant's participation in it, must be proved
21 by direct evidence. Both may be inferred from circumstantial
22 evidence. The common purpose or plan may be inferred from the
23 course of dealing between a defendant and another alleged
24 conspirator. In this regard you may, in determining whether an
25 agreement existed herein, consider the actions and statements

1 of all of those you find to be participants as proof that a
2 common design existed on the part of the person charged to act
3 together for the accomplishment of an unlawful purpose.

4 The government must prove beyond a reasonable doubt
5 that the defendant knew the essential purpose and aim of the
6 conspiracy and willingly participated with the intent to try to
7 accomplish that purpose. That is, the evidence must show
8 beyond a reasonable doubt that the defendant and at least one
9 other person in some way or manner, through some means, came to
10:36 10 a mutual understanding to try to accomplish the common unlawful
11 purpose, and that they did so knowingly, wilfully, and
12 intentionally.

13 Now, jurors, turning to Count Two, in Count Two, the
14 government charges Mr. Brown with using and carrying a firearm
15 during and in relation to a crime of violence in violation of
16 18 USC 924(c)(1)(A). As to this charge, there are three
17 elements that the government must prove beyond a reasonable
18 doubt.

19 First, that the defendant committed the crime of
10:37 20 affecting commerce by robbery or aided and abetted such crime
21 described in Count One; second, that the defendant knowingly
22 used or carried at least one of the firearms described in the
23 indictment during and in relation to that robbery, or that the
24 defendant knowingly possessed at least one of the firearms
25 described in the indictment in furtherance of the robbery; and

1 third, that during the course of the robbery the defendant
2 intentionally brandished a firearm.

3 I previously instructed you in regards to Count One as
4 to the meaning of the term "knowingly." I instruct you that
5 that term has the same meaning with respect to this crime
6 alleged in Count Two.

7 The term "firearm" means the federal definition of
8 firearm; that is, any weapon, which will or is designed to or
9 may readily be converted to expel a projectile through the
10:38 10 action of an explosive, or the frame or receiver of any such
11 weapon. In this case, the parties have stipulated that both
12 firearms described in the indictment are firearms within the
13 meaning of the statute. You, thus, must take those facts as
14 proved.

15 I instructed you that the second element the
16 government must prove is either that the defendant knowingly
17 used or carried at least one of the firearms during and in
18 relation to the robbery or that the defendant knowingly
19 possessed at least one of the firearms in furtherance of the
10:38 20 robbery.

21 To "carry" a firearm means to move or transport the
22 firearm on one's person or in a vehicle or container. It need
23 not be immediately accessible. To "use" a firearm means to
24 employ the firearm actively, such as to brandish, display,
25 strike with, discharge or attempt to discharge it, or even to

1 refer to in a way calculated to affect the underlying crime.
2 For either use or carry to be "during and in relation" to a
3 crime, the firearm must have played a role in the crime or must
4 have been intended by the defendant to play a role in the
5 crime. That need not have been its only purpose, however.

6 The second, alternative way for the government to
7 prove the second element is to prove beyond a reasonable doubt
8 that the defendant knowingly possessed at least one of the
9 firearms in furtherance of the robbery. A defendant possesses
10:39 10 a firearm "in furtherance" of a crime if the firearm possession
11 made the commission of the underlying crime easier, safer, or
12 faster, or in any other way helped the defendant commit the
13 crime. There must be some connection between the firearm and
14 the underlying crime, but the firearm need not have been
15 actively used during the crime.

16 The law recognizes two kinds of possession: actual
17 possession and constructive possession. A person who knowingly
18 has direct, physical control over an object at a given time is
19 in actual possession of an object. A person who physically
10:40 20 holds an object or knowingly has it on his person is in actual
21 possession of the object.

22 Even when a person who does not actively possess an
23 object, however, he may be in constructive possession of it.
24 Constructive possession exists when a person knowingly has the
25 power and the intention at a given time of exercising dominion

1 and control over an object, either directly or through others.
2 The law recognizes no distinction between actual and
3 constructive possession; either form of possession is
4 sufficient.

5 Possession of an object may be established by either
6 direct evidence or by circumstantial evidence.

7 The term "possession" also includes both sole
8 possession and joint possession. If one person alone has
9 actual or constructive possession, possession is sole. If two
10:40 10 or more persons share actual or constructive possession,
11 possession is joint. The law recognizes no distinction between
12 sole and joint possession.

13 Possession is not necessarily the same as legal
14 ownership. A person may be in possession of an item without
15 owning it.

16 The third element that the government must prove as to
17 Count Two beyond a reasonable doubt is that the defendant
18 intentionally brandished at least one of the firearms during
19 the robbery. The term "brandish" means, with respect to a
10:41 20 firearm, to display all or part of the firearm or otherwise
21 make the presence of the firearm known to another person in
22 order to intimidate that person, regardless of whether the
23 firearm is directly visible to that person.

24 To prove the third element, the government must prove
25 that the defendant intentionally brandished a firearm during

1 the robbery. Intent or knowledge may not ordinarily be proved
2 directly because there is no way of directly scrutinizing the
3 workings of the human mind. In determining what the defendant
4 knew or intended at a particular time, you may consider any
5 statements made or acts done or admitted by the defendant and
6 all other facts and circumstances received in evidence that may
7 aid in your determination of a defendant's knowledge or intent.
8 You may infer, but you certainly are not required to infer,
9 that a person intends the natural or probable consequences of
10:42 10 acts knowingly done or knowingly omitted. It is entirely up to
11 you, however, to decide what facts are proven by the evidence
12 received during this trial.

13 As to Count Two, the government alleges that the
14 defendant violated Title 18, United States Code 924(c) by using
15 or carrying during and in relation to the robbery, or
16 possessing in furtherance of the robbery, two firearms. To
17 find the defendant guilty of Count Two, however, it is not
18 necessary that you find the defendant used or carried or
19 possessed both firearms. It is sufficient if you find beyond a
10:43 20 reasonable doubt all of the elements of this offense with
21 respect to either one of the firearms described in the
22 indictment.

23 In providing you instructions for Count One, I
24 instructed you that an individual can sometimes be held liable
25 for the acts of others when that individual aids or abets

1 another in the commission of a crime or when that individual is
2 a member of a conspiracy and another member of the conspiracy
3 commits a crime in furtherance of that conspiracy. I charge
4 you that those same instructions apply with respect to Count
5 Two with the following exception:

6 To find the defendant guilty of aiding and abetting a
7 violation of Section 924(c), in addition to proving the
8 elements of aiding and abetting, as I previously instructed
9 you, you must find that the government has proved beyond a
10:44 10 reasonable doubt that the defendant knew to a practical
11 certainty that a firearm would be used or carried during and in
12 relation to the underlying crime, or that the firearm would be
13 possessed in furtherance of the underlying crime.

14 By contrast, to find the defendant guilty of
15 committing a violation of 924(c) on a theory of conspiracy, the
16 government must prove all of the five elements of conspiracy
17 liability beyond a reasonable doubt as I previously instructed
18 you. As to the final of those elements, the government need
19 prove beyond a reasonable doubt only that it was reasonably
10:44 20 foreseeable to the defendant that a firearm would be used or
21 carried during and in relation to the underlying crime or that
22 a firearm would be possessed in furtherance of the underlying
23 crime.

24 Turning to Count Three, jurors, in Count Three, the
25 defendant is charged with possessing a firearm or ammunition in

1 or affecting commerce after having been convicted of a crime
2 punishable by imprisonment for more than one year on or about
3 October 30, 2011. It is against federal law for a convicted
4 felon to possess a firearm or ammunition that was connected
5 with interstate commerce. For you to find Mr. Brown guilty of
6 this crime, you must be satisfied that the government has
7 proven each of the following things beyond a reasonable doubt:

8 First, that Mr. Brown has been convicted in any court
9 of a crime punishable by imprisonment for a term exceeding one
10:45 10 year. The parties have stipulated that Mr. Brown has been
11 convicted of a crime which is punishable by imprisonment for a
12 term exceeding one year. You are to take that fact as proven.

13 Second -- excuse me, I know a number of us are
14 recovering from colds, so I apologize.

15 The second element of this crime that the government
16 must prove beyond a reasonable doubt is that Mr. Brown
17 knowingly possessed the firearm or ammunition described in the
18 indictment.

19 And third, that the firearm or ammunition was
10:46 20 connected with interstate commerce. This means that the
21 firearm or ammunition at any time after it was manufactured
22 moved from one state to another. Thus, if the government
23 proves that the firearm or ammunition was previously in a state
24 other than Massachusetts and then possessed by the defendant in
25 Massachusetts, then this element has been satisfied. The

1 travel need not have been connected to the charge in the
2 indictment, it need not have been in furtherance of any
3 unlawful activity, and need not have occurred while Mr. Brown
4 possessed the firearm or ammunition. In this case, the parties
5 have stipulated that both firearms and the ammunition described
6 in the indictment were manufactured outside of Massachusetts
7 and traveled in interstate commerce prior to October 31, 2011.
8 You, thus, must take those facts as proved.

9 The term "firearm" means the federal definition of
10:47 10 firearm: any weapon which will or is designed or may readily be
11 converted to expel a projectile by action of an explosive. The
12 term "firearm," as I said before, also includes the frame or
13 receiver of any such weapon. This definition of firearm
14 includes handguns, rifles, and shotguns. In this case, the
15 parties have stipulated that both firearms described in the
16 indictment are firearms within the meaning of the statute.
17 You, thus, must take those facts as proved.

18 The term "ammunition" means the federal definition of
19 ammunition: any ammunition or cartridge cases, shotgun shells,
10:47 20 primers, bullets, or propellant powder designed for use in any
21 firearm. In this case, the parties have stipulated that the
22 ammunition described in the indictment are ammunition within
23 the meaning of the statute. You, thus, must take those facts
24 as proved.

25 The word "knowingly" means that the act was done

1 voluntarily and intentionally, not because of mistake or
2 accident. The government must prove beyond a reasonable doubt
3 that the defendant knowingly possessed the firearm or
4 ammunition. This does not mean that the government must show
5 that the defendant knew he was violating the law or intended to
6 violate the law by possessing a firearm or ammunition. To
7 satisfy this requirement, the government must only prove beyond
8 a reasonable doubt that the defendant knew that he was
9 possessing a firearm or ammunition.

10:48 10 The term "possess" means to exercise authority,
11 dominion, or control over something. It is not necessarily the
12 same, as I said before, as legal ownership. The law recognizes
13 different kinds of possession.

14 Possession includes, as I said, both actual and
15 constructive possession. A person who has direct, physical
16 control of something on or around his or her person is then in
17 actual possession of it. A person who is not in actual
18 possession, but who has both the power and intention to
19 exercise control over something, is in constructive possession
10:49 20 of it. Briefness of contact alone does not preclude a finding
21 of possession.

22 Duration of possession is not an element of the crime
23 charged. In considering the issue of possession in this case,
24 it is not necessary for you to conclude that the defendant,
25 Mr. Brown, was in actual or constructive possession of the

1 firearm or ammunition for any specified period of time. Even
2 if the government has proven that a defendant possessed a
3 firearm or ammunition for a short period of time, such
4 possession may be sufficient if the government has proven
5 beyond a reasonable doubt that the defendant knowingly
6 possessed the firearm or ammunition.

7 You should note that the government is not obligated
8 to prove that the defendant knowingly possessed both the
9 firearm and ammunition. Your verdict may be based on his
10:50 10 possession of either one if the government proves that
11 possession and all of the other elements of the crime that I'm
12 describing to you beyond a reasonable doubt. However, in order
13 to convict, you must all agree that the defendant possessed
14 either ammunition or a firearm or both; that is, if you the
15 jury find all the other elements proved beyond a reasonable
16 doubt, all 12 of you must agree on which of these items he
17 possessed.

18 You heard that the parties have stipulated that
19 Mr. Brown has been previously convicted of a crime. The fact
10:50 20 that the defendant was previously convicted of another crime
21 does not mean that he committed the crimes for which he is now
22 on trial. You must not rely on that prior conviction as proof
23 of all of the elements of the crimes charged in this case.

24 You will note when you see the indictment that the
25 indictment charges that the offenses occurred on or about

1 October 31, 2011. It does not matter if the indictment charges
2 that specific acts occurred in or around a certain date and the
3 evidence indicates, in fact, it was on another date. The law
4 only requires a substantial similarity between the dates
5 alleged in the indictment and the date established by testimony
6 or exhibits.

7 Jurors, the exhibits that have been admitted in
8 evidence for your consideration will be given to you. The
9 numbers assigned to the exhibits are for convenience and to
10:51 10 ensure an orderly procedure. You should draw no inference from
11 the fact that a particular exhibit was assigned a particular
12 number or that there may be gaps in the number sequence.

13 As I mentioned to you at the beginning of the trial,
14 you were permitted to take notes but some cautions apply. You
15 should bear in mind that not everything that is written down is
16 necessarily what was said. Thus, when you return to the jury
17 room to discuss the case, do not assume simply because
18 something appears in somebody's notes that it necessarily took
19 place in court. Notes are an aid to recollection, nothing
10:52 20 more. The fact that something is written down does not mean
21 that it is necessarily accurate.

22 Jurors, you'll be happy to hear that I'm coming to the
23 last part of my instructions to you.

24 I come now to the rules for your deliberation. When
25 you retire, you will discuss the case with the other jurors to

1 reach agreement if you can do so. As your first order of
2 business, you should select a foreperson. You shall permit
3 your foreperson to preside over your deliberations, and your
4 foreperson will speak for you here in court. Your verdict as
5 to each count must be unanimous; that is, all of you must agree
6 on the verdict.

7 Each of you must decide the case for yourself, but you
8 should do so only after considering all of the evidence,
9 discussing it fully with the other jurors and listening to the
10:53 10 views of the other jurors.

11 Do not be afraid to change your opinion if you think
12 you were wrong, but do not come to a decision simply because
13 other jurors think it is right.

14 This case has taken time and effort to prepare and
15 try. There is no reason to think it could be better tried or
16 that another jury is better qualified to decide it. It is
17 important, therefore, that you reach a verdict if you can do so
18 conscientiously. If it looks at some point as if you may have
19 difficulty in reaching a unanimous verdict and if the greater
10:53 20 number of you are agreed on a verdict, the jurors in both the
21 majority and the minority should reexamine their positions to
22 see whether they have given careful consideration and
23 sufficient weight to the evidence that has favorably impressed
24 the jurors who disagree with them. You should not hesitate to
25 reconsider your views from time to time and to change them if

1 you are persuaded that that is appropriate.

2 It is important that you attempt to return a verdict,
3 but of course only if each of you can do so after having made
4 your own conscientious determination. Do not surrender an
5 honest conviction as to the weight and effect of the evidence
6 simply to reach a verdict.

7 I want to read to you now from what is called the
8 verdict form. This is simply the written notice of the
9 decision that you will reach in this case. It's a one-page
10:54 10 sheet with the case caption and case number on it. It says,
11 "Verdict, we the jury find the defendant, Ronald Brown," and
12 then it has a listing for Count One, Count Two, and Count
13 Three, and it lists a description of each of the charges for
14 each of those counts, and under each count there's a space for
15 either not guilty or guilty. On the bottom there's a place for
16 the date and for the foreperson's signature.

17 After having reached unanimous agreement on a verdict,
18 your foreperson will fill in the form that I've just described
19 to you, sign and date it, and advise the jury officer outside
10:55 20 of your jury room door that you're ready to return to the
21 courtroom. After you return to the courtroom, the foreperson
22 will deliver the completed verdict form as directed in open
23 court.

24 If it becomes necessary, jurors, during your
25 deliberations to communicate with me, you may send a question

1 through the jury officer, signed by your foreperson or by one
2 or more members of the jury. No member of the jury should ever
3 attempt to communicate with me on anything concerning the case
4 except by signed writing, and I will communicate with any
5 member of the jury on anything concerning the case only in
6 writing or orally here in open court.

7 If you send out a question, I'll consult with the
8 parties as promptly as possible before answering it, which may
9 take some time. You may continue with your deliberations while
10:55 10 waiting for the answer to any question. Remember, you are not
11 to tell anyone, including me, how the jury stands numerically
12 or otherwise until after you have reached a unanimous verdict
13 or have been discharged.

14 Now, jurors, I need for a moment to consult with
15 counsel at sidebar.

16 (At sidebar on the record.)

17 MR. SHINE: Just a really minor point.

18 THE COURT: Page?

19 MR. SHINE: On the original instructions I have, 22.

11:01 20 It's the elements of the felon in possession.

21 THE COURT: Okay.

22 (Pause.)

23 THE COURT: Okay. 24.

24 MR. RICHARDSON: Page 24.

25 MR. SHINE: Yeah, it's the wrong date.

1 THE COURT: For the 31st?

2 MR. SHINE: You correct it down below.

3 THE COURT: I think I said it correctly, I don't know
4 if I said --

5 MR. RICHARDSON: I think you said "30th."

6 THE COURT: Okay. Do you want me to say something, or
7 do you want to just correct it in the written submission?

8 MR. SHINE: Just correct it in the written submission,
9 I think that's fair.

11:01 10 THE COURT: We'll do that.

11 MR. RICHARDSON: Your Honor, the only other thing I
12 had is back on page 13, the Court corrected it orally, but it's
13 in the second full paragraph there, the way it reads is that
14 the government --

15 THE COURT: Yes, I read it correctly, "must prove."
16 I think it's right -- I can change that, I said it
17 correctly.

18 MR. RICHARDSON: You did say it correctly.

19 THE COURT: Mr. Andrews?

11:01 20 MR. ANDREWS: Yes, your Honor. I renew my objections
21 as far as the conspiracy instruction.

22 THE COURT: Yes.

23 MR. ANDREWS: That's on page 16 and 17.

24 THE COURT: Understood.

25 MR. ANDREWS: And I believe that you also have a

1 reference to it on page 23.

2 THE COURT: Yes, as to both Counts One and Two.

3 MR. ANDREWS: Exactly.

4 You know, just more thinking about it, I just find it
5 so confusing. One of the facts in this case is that Mr. Brown
6 is seen walking down the street with Mr. Lynch Arthur
7 afterwards, and he notices -- the odd possibility, people could
8 think maybe he joined up with him afterwards, heard sirens,
9 knows something is going on. Now, under those circumstances, I
11:01 10 just think it's not appropriate because there's so little
11 evidence that this was -- there's no evidence that this was
12 preplanned or that there's an association between the two of
13 them.

14 So --

15 THE COURT: I understand the nature of your objection.
16 I think, given the thoroughness and clarity of the instructions
17 themselves, I'm not concerned about that risk, but your
18 objection is preserved.

19 MR. ANDREWS: Thank you, your Honor.

11:01 20 This may not be of concern to the Court. There's a
21 portion where you talk about the rendering a verdict.

22 THE COURT: Yes, which is on --

23 MR. ANDREWS: My brothers can give their opinion --

24 THE COURT: 33?

25 MR. ANDREWS: I worry that someone comes to a verdict

1 on one count and maybe did not want to be giving out -- I know
2 we call the verdict form the single completed form, is it clear
3 to the jurors that all the counts have to be decided before the
4 verdict form is tendered?

5 THE COURT: I think that's --

6 MR. ANDREWS: If I'm the only one that seems possible
7 confusion --

8 THE COURT: I think it's implicit in my instructions.

9 MR. ANDREWS: The way I heard it, I just thought --

11:01 10 THE COURT: It might be my cold, counsel.

11 MR. ANDREWS: Excuse me?

12 THE COURT: It might be my cold.

13 Anything else?

14 MR. ANDREWS: Well, the instructions -- I'll leave
15 humor off the record.

16 THE COURT: Okay.

17 Counsel, just give me a moment.

18 (Discussion off the record.)

19 THE COURT: There wasn't anything else, counsel?

11:01 20 MR. ANDREWS: No, there wasn't.

21 THE COURT: I'll give the last instruction.

22 (End of discussion at sidebar.)

23 THE COURT: Members of the jury, again, thank you for
24 your patience and your attention throughout this matter.

25 It is now time for the case to be submitted to you. I

1 will submit to you a written copy of the jury charge that I
2 read to you this morning for when you go to the jury room. I
3 want to caution you, however, not to dwell on any particular
4 portion of it, if you decide to review it at all, because you
5 must consider these instructions as a whole and not just one
6 individual, particular instruction.

7 You may commence your deliberations. All of you who
8 are on the jury must be together at all times when you're
9 deliberating. Whenever you need a recess for any purpose, your
11:02 10 foreperson may declare a recess.

11 Do not discuss the case during a recess in your
12 deliberations. All your discussion of the case should occur
13 only when you are all together and your foreperson has
14 indicated that deliberations may proceed. This should be your
15 procedure so that everyone on the jury has equal opportunity to
16 participate and hear all of what other members of the jury have
17 to say.

18 You may go to the jury room and commence your
19 deliberations.

11:02 20 As I said before, in short order, the exhibits that
21 are were admitted in evidence will be sent back to you, and
22 you'll also receive, as I said, a copy of the indictment, that
23 is the written charge; a copy of the verdict form; and a copy
24 of my instructions to you.

25 Jurors, you may go and deliberate. I do have to ask

1 Ms. MacKinnon to stay behind.

2 THE CLERK: All rise.

3 (Jury left the courtroom.)

4 * * * * *

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6 CERTIFICATION

7 I certify that the foregoing is a correct transcript
8 of the record of proceedings in the above-entitled matter to
9 the best of my skill and ability.

10
11
12
13 /s/Debra M. Joyce
14 Debra M. Joyce, RMR, CRR
Official Court Reporter

August 26, 2013
Date